THE HON'BLE SRI JUSTICE V.V.S.RAO

–

WRIT PETITION No.12711 of 2005

–

Dated:23.03.2006

–

–

Between:

Kanchi Naga Dharma Rao, S/o.Satyanarayana, and others.

…Petitioner

And

The District Collector, Krishna District at Machilipatnam, and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12711 of 2005

ORDER:

The petitioners claim that they are in occupation of land in Survey No.91 of Bommuluru Village of Bapulapadu Mandal, Krishna District, which they have been

cultivating for over four decades. The Mandal Revenue Officer initiated action under the Land Encroachment Act, 1905 (for short 'the Act') and issued a notice, dated 14.12.2004 under Section 7 of the Act. The petitioners submitted explanation. Without passing any orders under Section 6 of the Act, it is alleged, the Mandal Revenue Officer tried to dispossess the petitioners. The petitioners then filed W.P.No.6774 of 2005. This Court disposed of the Writ Petition on 30.03.2005 directing the respondents not to dispossess the petitioners from the lands in question without passing any order under Section 6 of the Act. Thereafter, on 07.05.2005 the Mandal Revenue Officer passed orders under Section 6 of the Act directing the petitioners to remove the encroachments. Aggrieved by the same, the petitioners sent an appeal on 11.05.2005, and also presented appeal to the Revenue Divisional Officer, Nuzvid, on 13.05.2005, and the matter was posted on 21.05.2005. It is alleged that the Counsel appearing for the petitioners before the Revenue Divisional Officer could not be present before the Revenue Divisional Officer and a request was made for adjournment, besides sending a telegram to that effect. However, the Revenue Divisional Officer passed *ex parte* orders on 21.05.2005 dismissing the appeal and directing the Mandal Revenue Officer, Bapulapadu, to take further action without any delay. A copy of the order of the Revenue Divisional Officer was allegedly not served. When the Mandal Revenue Officer came to the petitioners' land, they filed the present writ petition seeking a direction to the respondents not to evict them without affording any opportunity to them.

After hearing the learned Counsel for the petitioners and the learned Assistant Government Pleader for Revenue (General), this Court is convinced that the orders passed by the Revenue Divisional Officer in C.C.No.772 of 2005 in purported exercise under Section 10 of the Act suffers from impropriety and that the principles of fairness are not followed. Even though a request was made for adjournment, the matter was proceeded with without hearing the petitioners or their Counsel. It is brought to the notice of this Court that the petitioners' Counsel, Sri J.R.V.Subba Rao, underwent coronary bypass surgery at or about the time, when the appeal was disposed of.

For the above said reasons, this Writ Petition is allowed and the order passed by the Revenue Divisional Officer in C.C.No.772 of 2005, dated 21.05.2005, is set aside. The matter is remanded to the Revenue Divisional Officer for a fresh disposal. The petitioners or their Counsel shall appear before the Revenue Divisional Officer, Nuzvid, on 13.04.2006 without fail. On that day, the Revenue Divisional Officer shall hear them and pass appropriate orders in accordance with law. No costs.

In the counter affidavit filed by the respondents it is stated that pursuant to the orders of the Revenue Divisional Officer in C.C.No.772 of 2005, dated 21.05.2005, the Mandal Revenue Officer has taken possession on 13.06.2005. This is denied by the petitioners. Therefore, there shall be *status quo* as on today.

(V.V.S.RAO, J)

23.03.2006

Note: Dispatch order copy by 24.03.2006

By order

vs